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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,989	02/20/2001	Kiyoshi Maruyama	YOR920000444	6763

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EXAMINER

ENG, DAVID Y

ART UNIT	PAPER NUMBER
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2155

DATE MAILED: 06/08/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/921,989

Applicant(s)

MARUYAMA ET AL.

Examiner

DAVID Y. ENG

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-23 and 38-46 is/are allowed.
- 6) ☒ Claim(s) 1-14 and 24-37 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Claims 1-14, and 24-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to the last paragraph of claim 1, it is not seen how controlling flow of the incoming workload from the common buffer to the plurality of servers would provide at least the minimum TCP connection rate as set forth in the so as clause.

Claim 4 is not understood. It is not seen how the step recited therein would satisfy the so as clause in parent claim 1.

Claims 24-37 have similar defects above.

Further with respect to claim 29, it appears that it is dependent on claim 24 instead of claim 4.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 and 24-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark (6,442,588) in view of Holmskar (6,438,551).

See at least lines 46-58 of column 4 in Clark. Clark teaches a system having an OSP (online service provider) server complex 222 and DFF 210 (dynamic filter firewall). All TCP connection requests are screened by the DFF for limiting the number of requests to the server. Clark does not teach a common buffer for storing the TCP connection requests. However, Holmskar teaches using buffer for storing access

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requests (see lines 41-44 of column 2). Holmskar further teaches controlling the flow of requests from the buffer to the central processor (see lines 8-14 of column 4) so as to provide at least the minimum access rate. From the teaching of Holmskar, it would have been obvious to a person of ordinary skill in the art to use buffer for storing TCP connection requests of Clark and for controlling the flow of requests from the buffer to the central processor so as to provide at least the minimum access rate.

As to claim 2, in Holmskar, all the incoming requests are in the common buffer also. FIFO is a well known scheme.

In claim 3, there is no control of outbound in Clark also.

As to claims 4 and 5, it is well known that communication via network is in packets. Clark teaches using Internet for communication.

With respect to claims 6-10, it is obvious that the rate of connection can be controlled by either decrease or increase the number of requests permitted to be transferred from the buffer to the server in Clark.


As to claim 11, the priority level in Holmskar can be changed also (lines 37-45 of column 2).

As to claim 12, the subscribers and the servers of Clark are able to communicate with each other also. Note that there is no steps recited for collecting any statistics data in the claim. Claim 12 merely recites external communication.

As to claims 13 and 14, it is well known that number of packets and unit time are variables defining rate of packet flow. Therefore, it would have been obvious to control rate of flow by regulating (varying) either packet numbers or time.

Claims 24-37 do not define above the invention claimed in claims 1-14 and therefore are rejected for the same reasons.

Claims 15-23 and 38-46 are allowed.



DAVID Y. ENG
PRIMARY EXAMINER